
No. 99-4318

No. 00-1472

[UNPUBLISHED]

	*
Appellants,	*
	*
v.	*
	*
Smithkline Beecham Corporation,	*
a Pennsylvania Corporation,	*
	*
Appellee.	*

Submitted: March 15, 2001
 Filed: March 19, 2001

Before BOWMAN, BEAM, and LOKEN, Circuit Judges.

PER CURIAM.

In 1994 plaintiffs¹ each filed complaints against Smithkline Beecham Corporation (SBC), alleging that their cattle became sick after being vaccinated with three bovine vaccines manufactured by SBC. Plaintiffs asserted state law claims for strict liability, breaches of the implied warranties of merchantability and fitness, false advertising and promotion, failure to warn, and fraud on the licensing agency. In an interlocutory appeal from the district court's² denial of SBC's motion for summary judgment, we reversed and remanded, holding that the Virus-Serum-Toxin Act (VSTA), 21 U.S.C. §§ 151-159, as construed by the Animal and Plant Health Inspection Service (APHIS), preempted plaintiffs' claims to the extent they relied upon liability-creating premises different from or in addition to those created by VSTA. See

¹Plaintiffs' separate appeals have been consolidated for disposition.

²The HONORABLE CHARLES B. KORMANN, United States District Judge for the District of South Dakota.

Symens v. SmithKline Beecham Corp., 152 F.3d 1050, 1054-56 (8th Cir. 1998). We remanded the case to the district court to determine, by a comparison of plaintiffs' substantive state law claims and federal requirements, whether the claims fell within VSTA's preemptive scope. On remand, the district court³ granted SBC's renewed motion for summary judgment, finding that all but one of plaintiffs' claims were preempted because they imposed additional or different requirements than those imposed by federal regulations. The court found that the remaining claim, while not preempted, failed for lack of evidence creating any genuine issue of material fact.

Upon a careful review of the record and the parties' submissions, we conclude that the district court faithfully carried out our mandate in Symens to analyze the claims, and that summary judgment was properly granted. Plaintiffs have provided no persuasive reason why the grant of summary judgment should be reversed. See Fed. R. Civ. P. 56(e).

Accordingly, we affirm. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

³The HONORABLE RICHARD H. BATTEY, United States District Judge for the District of South Dakota.